

LORETTA A. SHEEHAN 4160-0
CLARE E. CONNORS 7936-0
THOMAS M. OTAKE 7622-0
DAVIS LEVIN LIVINGSTON
851 Fort Street, Suite 400
Honolulu, Hawai'i 96813
Telephone: (808) 524-7500
Facsimile: (808) 356-0418
Email: lsheehan@davislevin.com

LYLE S. HOSODA 3964-0
ADDISON D. BONNER 9163-0
HOSODA & BONNER, LLC
Three Waterfront Plaza, Suite 499
500 Ala Moana Boulevard
Honolulu, Hawai'i 96813
Telephone: (808) 524-3700
Facsimile: (808) 524-3838
Email: lsh@hosodalaw.com

Attorneys for Plaintiff
MARK N. BEGLEY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

MARK N. BEGLEY,

Plaintiff,

vs.

COUNTY OF KAUAI, KAUAI
POLICE DEPARTMENT; DARRYL
PERRY; ROY ASHER; MICHAEL
CONTRADES; AND DOE
DEFENDANTS 16-100,

Defendants.

Civil No. 16-00350 LEK-RLP

**PLAINTIFF'S CONCISE
COUNTERSTATEMENT OF
MATERIAL FACTS IN SUPPORT
OF HIS MEMORANDUM IN
OPPOSITION TO [312]
DEFENDANT ROY ASHER'S, IN
HIS INDIVIDUAL CAPACITY,
MOTION FOR SUMMARY**

[continued on following page]

**JUDGMENT; AFFIDAVIT OF
MARK N. BEGLEY;
DECLARATION OF LYLE S.
HOSODA; EXHIBITS 1-51;
CERTIFICATE OF COMPLIANCE
WITH LOCAL RULE 7.5;
CERTIFICATE OF SERVICE**

[Re: ECF No. 387]

DATE: November 19, 2018

TIME: 9:45 a.m.

JUDGE: Hon. Leslie E. Kobayashi

TRIAL: May 6, 2019

**PLAINTIFF’S CONCISE COUNTERSTATEMENT
OF MATERIAL FACTS IN SUPPORT OF HIS MEMORANDUM
IN OPPOSITION TO [312] DEFENDANT ROY ASHER’S, IN HIS
INDIVIDUAL CAPACITY, MOTION FOR SUMMARY JUDGMENT**

Pursuant to Local Rule 56.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawai‘i, Plaintiff MARK N. BEGLEY (“Plaintiff” or “Pl.”), by and through his attorneys Davin Levin Livingston and Hosoda & Bonner, LLC, hereby submits his Concise Counterstatement of Material Facts in Support of His Memorandum in Opposition to [312] Defendant Roy Asher’s, In His Individual Capacity, Motion for Summary Judgment (“Memorandum”), which Memorandum is being filed concurrently herewith.

Plaintiff responds as follows to Defendant Roy Asher’s (“Asher”) Concise Statement of Facts:

	FACT	EVIDENCE
1.	ADMITTED	
2.	ADMITTED	
3.	DISPUTED	Ex 9 of Ex 30
4.	DISPUTED	Ex 9 of Ex 30
5.	DISPUTED – 08/24/11 Pl. emailed KPD informing of Asher’s false order.	Ex 9 of Ex 30; Ex 18
6.	ADMITTED	
7.	DISPUTED – Pl. did not reveal identity of the Dispatcher	Ex 36-37
8.	DISPUTED – Pl. did not reveal identity of the Dispatcher	Ex 36-37
9.	DISPUTED – quote attributed to the Dispatcher does not appear in her statement	Ex 36
10.	DISPUTED – Asher instructed the Dispatcher to tell the Chief	Ex 36
11.	DISPUTED – quote attributed to the Dispatcher does not appear in her statement	Ex 36
12.	DISPUTED	Ex 37
13.	DISPUTED – Perry knew of this prior to 5/7/12	Ex 33
14.	ADMITTED	
15.	ADMITTED	
16.	ADMITTED	
17.	ADMITTED	
18.	ADMITTED	
19.	ADMITTED	
20.	DISPUTED – Asher sits on ARB Board which determines the outcome of internal investigations	Ex. 1 of Ex. 31
21.	ADMITTED	
22.	DISPUTED – Asher told Dispatcher to talk to Perry	Ex. 36
23.	DISPUTED	Ex. 9 of Ex. 30; Ex. 16 at P00051-52; Ex. 18 at COK1308-09; Ex. 19; Ex. 27; Ex. 15 of Ex. 23; Plaintiff’s Affidavit (“PAff”) ¶¶ 11-12; Ex. 32 at 152:23-154:17

	FACT	EVIDENCE
24.	ADMITTED	
25.	ADMITTED	
26.	ADMITTED	
27.	ADMITTED	
28.	ADMITTED	
29.	DISPUTED	Ex. 14 of Ex. 29
30.	ADMITTED	
31.	ADMITTED	
32.	DISPUTED	Ex. 9 of Ex. 30; Ex. 16 at P00051-52; Ex. 18 at COK1308-09; Ex. 19; Ex. 27; Ex. 15 of Ex. 23; PAff ¶¶ 11-12; Ex. 32 at 152:23-154:17
33.	DISPUTED	Ex. 9 of Ex. 30; Ex. 16 at P00051-52; Ex. 18 at COK1308-09; Ex. 19; Ex. 27; Ex. 15 of Ex. 23; PAff ¶¶ 11-12; Ex. 32 at 152:23-154:17
34.	DISPUTED	Ex. 9 of Ex. 30; Ex. 16 at P00051-52; Ex. 18 at COK1308-09; Ex. 19; Ex. 27; Ex. 15 of Ex. 23; PAff ¶¶ 11-12; Ex. 32 at 152:23-154:17
35.	ADMITTED	
36.	ADMITTED	
37.	ADMITTED	
38.	ADMITTED	

	ADDITIONAL MATERIAL FACTS ("AMF")	EVIDENCE
1.	In January 2011, Pl. confronted Asher for misconduct	PAff ¶ 11; Ex. 9 of Ex. 30
2.	01/24/11 Pl. reports Asher misconduct to Perry	PAff ¶ 12; Ex. 17, Ex. 16

	ADDITIONAL MATERIAL FACTS ("AMF")	EVIDENCE
3.	08/03/11 Pl. reports Asher's retaliation re: Pl. ordering no contact with Abbatiello	Ex. 16 at 52; Ex. 12 to 23
4.	08/24/11 Pl. rebuts Asher's false rumor	Ex. 9 of Ex. 30
5.	08/25/11 Pl. 2 nd report of Asher to Perry	Ex. 16 at P00051
6.	10/10/11 Perry acknowledged need to hire independent investigator and his delay in investigating	Ex. 19
7.	10/18/11 Abbatiello submits 3 complaints against Asher	Ex. 25
8.	11/09/11 Perry tries for 2 nd time to dissuade Abbatiello from pursuing complaint against Asher	Ex. 26
9.	11/30/11 Pl. signs Small Purchase form for procuring independent investigator and subsequently signs for investigator invoices	Ex. 20, 21
10.	12/29/11 Pl. reported Asher and Perry to County Attorney	Ex. 22
11.	01/25/12, Asher named in Abbatiello Complaint sent to Mayor's Office	Ex. 27
12.	01/26/12, Asher informed in Senior Staff meeting that Abbatiello Complaint sent to Mayor	Ex. 5 of Ex. 29
13.	01/30/12, Asher informed that he is on leave due to Abbatiello Complaint investigation	Ex. 50
14.	01/30/12 Perry requests to go on administrative leave with pay but is not allowed by Mayor	Ex. 9 of Ex. 23; Ex. 23 at 94:15-19; Ex. 50
15.	2/1/12 Asher informed that Perry on leave and intends to exclude Pl. from KPD Chain of command	Ex. 28
16.	05/07/12: Perry threatens Officer Hsu into making a statement re KPD-IA-12-06	Ex. 33
17.	05/18/12 Perry orders Asher to write report re Pl. alleged disclosure of Dispatcher confidential information (KPD-IA-12-06)	Ex. 34
18.	05/22/12 Asher memorandum re: KPD-IA-12-06	Ex. 35

	ADDITIONAL MATERIAL FACTS ("AMF")	EVIDENCE
19.	06/15/12 Kristen Long gives interview to Elliot Ke	Ex. 36
20.	06/18/12 Hanson Hsu gives interview to Elliot Ke	Ex. 37
21.	09/12/12 Perry declares Withy Report to be "deficient"	Ex. 39
22.	09/27/12 - 09/30/12, Asher participates in scheme to withhold Pl. computer from County Attorney via use of false claim of criminal investigation	Ex. 41-42; Ex. 40 at 119:5-120:1
23.	01/09/13 Asher agrees with Perry plan to interfere with Pl. EEOC complaints	Ex. 11 of Ex. 30
24.	10/03/13 Asher's Investigative Services Branch (ISB) detectives surveil Pl. and Asher reports surveillance information to Perry.	Ex. 44
25.	10/08/13 Perry reports Pl. to DLNR "for possible criminal violations" and misrepresents his source as an "anonymous complaint"	Ex. 45
26.	10/08/13 Perry reports to Governor's Office that he received anonymous complaint re Pl., which was false, and doesn't mention reporting it to DLNR	Ex. 46
27.	Sometime before 07/17/13, Asher reads the Withy Report and Pl. memo requesting outside investigator, blames Pl. for investigation	Ex. 43; Ex. 39
28.	Perry authorizes, initiates, reviews the results of, and decides ARB matters; ARB consists of the three Assistant Chiefs of each bureau, and the Deputy Chief of Police; prior to February 6, 2012, no other Assistant Chief's had ever been subjected to ARB proceedings.	Ex. 23 at 15:17-24; Ex. 1 of Ex. 23; Ex. 1 of Ex. 31; Ex. 30 at 46:5-10, 252:7-253:4; Ex. 29 at 43:6-12, 46:20-47:10, 54:4-16, 72:8-17
29.	01/29/16-07/31/18 Perry declines to pursue Asher "for possible criminal violations" related to allegations of sexual assault.	Ex. 23 at 65:13-66:1; 69:6-22, 123:9-125:25
30.	In 2016 and 2018 Perry exercises his discretion to close investigation of sexual assault by Asher.	Ex. 23, Ex. 47-48

	ADDITIONAL MATERIAL FACTS ("AMF")	EVIDENCE
31.	Defendants Perry, Contrades and Asher have expressed animus toward Pl.	Ex. 14 of Ex. 30, Ex. 37 of Ex. 29, Ex. 5 of Ex. 29, Ex. 11 of Ex. 30, Ex 13 of Ex 23
32.	Defendants Perry, Contrades, and Asher contributed to investigations of Pl. which would dissuade a reasonable worker	Ex. 29 at 232:1-234:4, Ex. 29 at 39:8-43:13; Ex. 29 at 51:8-52:12; Ex. 11 of Ex. 29; Ex. 29, 30 of Ex. 29; Ex. 29 48:7-12; 49:10-21
33.	12 internal investigations opened against Pl.	Ex. 12 of 29; Ex. 29 at 139:22-140:9
34.	Pl. suffers from severe emotional distress symptoms due to retaliation conducted by Defendants Perry, Contrades, Asher	Ex. 49

DATED: Honolulu, Hawai'i, October 29, 2018.

/s/ Clare E. Connors
LORETTA A. SHEEHAN
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DEFENDANTS 16-100,
Defendants.

Civil No. CV16-00350 LEK-RLP

**CERTIFICATE OF COMPLIANCE
WITH LOCAL RULE 7.5**

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.5

I hereby certify pursuant to Rule 7.5 of the Local Rules of Practice for the United States District Court for the District of Hawaii that **PLAINTIFF'S CONCISE COUNTERSTATEMENT OF MATERIAL FACTS IN SUPPORT OF HIS MEMORANDUM IN OPPOSITION TO [312] DEFENDANT ROY ASHER'S, IN HIS INDIVIDUAL CAPACITY, MOTION FOR SUMMARY JUDGMENT**, contains 1,129 words according to Microsoft Word's word count program.

DATED: Honolulu, Hawaii, October 29, 2018.

/s/ CLARE E. CONNORS
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Attorneys for Plaintiff